

**United States Department of Labor
Employees' Compensation Appeals Board**

B.H., Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL
CENTER, East Orange, NJ, Employer**

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**Docket No. 07-1490
Issued: October 24, 2007**

Appearances:

*Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 10, 2007 appellant filed a timely appeal from a November 6, 2006 Office of Workers' Compensation Programs' decision denying his claim for an injury on July 14, 2003. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant sustained a back injury on July 14, 2003 while in the performance of duty.

FACTUAL HISTORY

This is the second appeal in this case.¹

¹ See Docket No. 05-931 (issued December 5, 2005). By order dated December 5, 2005, the Board remanded the case for reconstruction and proper assemblage because the record did not contain a medical report considered in a November 2, 2004 Office decision.

On July 14, 2003 appellant, then a 50-year-old housekeeping aide, filed a traumatic injury claim alleging that he injured his back at work when he bent over to clean a toilet. He stopped work on July 15, 2003 and was released to return to work in a light-duty capacity on October 1, 2003.

On October 24, 2002 Dr. David A. Yazdan, an attending neurosurgeon, indicated that appellant had sustained several back injuries in the past, the most recent occurring on February 1, 2002 when he was lifting laundry bags and aggravated a lumbar spine condition with subsequent radiculopathy. He stated that a magnetic resonance imaging (MRI) scan revealed a herniated disc at L4-5. Appellant underwent back surgery on October 16, 2002. Dr. Yazdan diagnosed post-traumatic lumbar radiculopathy, secondary to the February 1, 2002 work incident. In a February 24, 2003 report, he stated that appellant had a compromised lumbosacral back which prevented him from lifting anything over 10 or 15 pounds or performing "laborious" jobs. On April 14, 2003 Dr. Yazdan stated that appellant's severe low back pain with radiculopathy into the left lower extremity began several years previously and was aggravated by the February 2002 work incident and a July 22, 2002 accident, necessitating surgery.²

In a September 2, 2003 form report, Dr. Yazdan provided a diagnosis of postlaminectomy syndrome and "pain" in the lower left extremity. He checked "yes," indicating that appellant's left lower extremity pain was causally related to the July 14, 2003 work incident.

On October 3, 2003 Dr. Yazdan stated that he first examined appellant on August 9, 2002 for severe low back pain and sciatica which he had been experiencing for several years. Appellant's condition was aggravated on February 1, 2002 when he lifted heavy laundry bags at work. Dr. Yazdan stated:

"Subsequent to the February [2003] visit [appellant] was last seen on July 29 because he developed further pain in the left lower extremity[,] similar to the pain he had before[,] due to the incident when he was cleaning the restroom on July 14, 2003. This is related to the kind of job that he has, which is janitorial. This requires lifting, pushing and shoving. These activities are not conducive to the healing of the chronic lumbar sacral syndrome. As a result, I started him on [eight] weeks of physiotherapy and I told him he should not return to his previous job.

"[Appellant] also had further x-rays taken of his lumbar sacral spine. The results were negative. I last saw him on September 16, 2003 ... and at that time it was quite evident that [appellant] is not able to resume his previous job. I told [appellant] [that] he should go on permanent disability due to his chronic lumbar sacral syndrome and chronic cardiac insufficiency, which prevents him from resuming any kind of laborious job."

² The record shows that appellant filed a claim for an aggravation of a lumbar sprain on February 1, 2002 which was accepted by the Office for aggravation of a lumbar sprain. His claim for a back injury on July 22, 2002, when he lifted a trash can, was denied in a December 9, 2002 decision. Appellant underwent back surgery on October 16, 2002. The surgery was not accepted by the Office as work related.

“In summary, one can say within reasonable medical probability that the work-related accidents of February and July 22, 2002 and July 14, 2003 are directly responsible for [appellant’s] disability.”

By decision dated December 8, 2003, the Office denied appellant’s claim on the grounds that the evidence did not establish that he sustained a back injury on July 14, 2003 while in the performance of duty.

Appellant requested an oral hearing that was held on July 22, 2004. He submitted additional evidence at the hearing. In a July 19, 2004 report, Dr. Yazdan stated that appellant took leave from work from the end of July to October 1, 2003. He stated that “This was due to the fact that on July 14, 2003 he sprained his back while mopping the floor and picking up articles from the floor at work. He became quite symptomatic and he came into the office and I put him on physical therapy....” In an August 4, 2004 report, Dr. Yazdan stated:

“[Appellant’s] job is an occupational hazard for his back whether he bent over to clean a toilet or he picked up things from the floor. Either way there is unusual strenuous bending of the back, which, if it becomes repetitive, is not conducive to his well-being and will sprain his back further.

“Therefore, one can say within reasonable medical probability that these activities, including bending over to clean toilets and picking up things from the floor[,] aggravates the back injury....”

By decision dated November 2, 2004, an Office hearing representative affirmed the December 8, 2003 decision.

By decision dated March 27, 2006, the Office denied appellant’s claim on the grounds that the medical evidence failed to establish that he sustained a back injury on July 14, 2003 while in the performance of duty.

On March 30, 2006 appellant requested a hearing that was held on August 1, 2006. By decision dated November 6, 2006, an Office hearing representative affirmed the March 27, 2006 decision.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees’ Compensation Act³ has the burden to establish the essential elements of his claim including the fact that the individual is an employee of the United States within the meaning of the Act, that the claim was timely filed, that an injury was sustained in the performance of duty as alleged and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.⁴

³ 5 U.S.C. §§ 8101-8193.

⁴ *Elaine Pendleton*, 40 ECAB 1143 (1989).

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the “fact of injury” has been established. There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place and in the manner alleged.⁵ Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.⁶ An employee may establish that the employment incident occurred as alleged but fail to show that his disability or condition relates to the employment incident.

To establish a causal relationship between a claimant’s condition and any attendant disability claimed and the employment event or incident, he must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship. Rationalized medical opinion evidence is medical evidence which includes a physician’s opinion on the issue of whether there is a causal relationship between the claimant’s diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁷

ANALYSIS

In a September 2, 2003 form report, Dr. Yazdan diagnosed a postlaminectomy syndrome and “pain” in the lower left extremity. He checked “yes,” indicating that these conditions were causally related to the July 14, 2003 work incident. However, Dr. Yazdan did not provide a description of how the claimed injury occurred. The Board has held that a physician’s opinion on causal relationship which consists only of checking “yes” to a question of whether the claimant’s condition was related to his employment is of diminished probative value on the issue of causal relationship.⁸ Lacking medical rationale explaining how the diagnosed conditions are causally related to appellant’s July 14, 2003 work incident, Dr. Yazdan’s report is insufficient to establish that appellant sustained a work-related back injury on July 14, 2003.

On October 3, 2003 Dr. Yazdan stated that he saw appellant on July 29, 2003 for pain in his left lower extremity related to his cleaning a restroom on July 14, 2003. He noted that x-rays were normal. Dr. Yazdan stated that appellant’s janitorial duties were not conducive to the healing of his chronic lumbosacral syndrome. He opined that appellant’s back condition was caused by “the work-related accidents” of February 1 and July 22, 2002 and July 14, 2003. Dr. Yazdan’s opinion is not based on a complete and accurate factual background. As noted, appellant’s July 22, 2002 claim was not accepted by the Office. Additionally, he did not provide a specific diagnosis for the claimed July 14, 2003 injury, although the inference is an aggravation

⁵ *John J. Carlone*, 41 ECAB 354 (1989).

⁶ *Shirley A. Temple*, 48 ECAB 404 (1997).

⁷ *Gary J. Watling*, 52 ECAB 278 (2001); *Shirley A. Temple*, *supra* note 6.

⁸ *See Calvin E. King*, 51 ECAB 394 (2000).

of a chronic lumbosacral syndrome. Dr. Yazdan provided no results of objective testing. He did not describe the specific mechanism of injury, *i.e.*, how the act of bending over while cleaning a toilet, caused or aggravated a back injury. Dr. Yazdan provided insufficient medical rationale explaining how the July 14, 2003 work incident caused or aggravated a back condition. Due to these deficiencies, this report is insufficient to establish that appellant sustained a work-related back injury on July 14, 2003.

In a July 19, 2004 report, Dr. Yazdan stated that appellant took leave from work from the end of July 2003 to October 1, 2003 because on July 14, 2003 he sprained his back while mopping the floor and picking up articles from the floor. This report is not based on a complete and accurate factual background. Appellant alleged that his back injury was sustained when he bent over while cleaning a toilet, not mopping the floor and picking up items. Therefore, this report is of diminished probative value and is insufficient to discharge appellant's burden of proof.

In an August 4, 2004 report, regarding what specific activity appellant was performing at work on July 14, 2003 when his claimed back injury occurred, Dr. Yazdan stated that his job was hazardous for his back whether he bent over to clean a toilet or pick up items from the floor. He indicated that each activity involved an unusual and strenuous bending of the back which could aggravate appellant's back condition. However, Dr. Yazdan did not explain how these two specific activities were more unusual and strenuous than appellant's other job activities. He did not explain the specific mechanism of injury. Dr. Yazdan provided no specific diagnosis. He provided insufficient medical rationale explaining how appellant sustained a work-related back injury on July 14, 2003.

Due to the deficiencies in Dr. Yazdan's reports, they are insufficient to establish that appellant sustained a specific back condition causally related to the July 14, 2003 work incident when he bent over while cleaning a toilet. Therefore, the Office properly denied appellant's claim.

CONCLUSION

The Board finds that appellant failed to establish that he sustained an injury on July 14, 2003 while in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 6, 2006 is affirmed.

Issued: October 24, 2007
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board